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No. 86 - 1773

Supreme Court, Ill.
FILED

JUN 22 1987

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1986

ROBERT G. CRONSON, Auditor General
of the State of Illinois,

Petitioner,

vs.

WILLIAM M. MADDEN, Acting Director of the
Administrative Office of the Illinois Courts,

Respondent.

On Petition For A Writ Of Certiorari
To The Illinois Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should interfere in the proceedings of the Supreme Court of Illinois, when such proceedings involve wholly state interests and raise issues which turn exclusively on state law.

PARTIES TO THE PROCEEDINGS

William M. Madden is the respondent herein. William M. Madden is the Acting Director of the Administrative Office of the Illinois Courts.

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of the State of Illinois,**

Petitioner,

vs.

**WILLIAM M. MADDEN, Acting Director of the
Administrative Office of the Illinois Courts,**

Respondent.

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RESPONDENT'S BRIEF IN OPPOSITION

This matter is pending on the petition of Robert G. Cronson for a writ of certiorari to the Illinois Supreme Court. Respondent William M. Madden submits this response in opposition to that petition, and respectfully requests that the petition be denied.

INTRODUCTION

The issue in this case is whether the United States Supreme Court may direct the Supreme Court of Illinois in performing its judicial function in a matter which turns entirely upon issues of state law. The Supreme Court of

Illinois retained jurisdiction in this matter and issued a writ of mandamus against Petitioner. Petitioner sought injunctive relief against the Illinois Supreme Court in the United States District Court for the Central District of Illinois and the United States Court of Appeals for the Seventh Circuit. Both the district court and the court of appeals ruled that this case lies outside the jurisdiction of the federal courts. The disposition of the purely state issues in this case by the Illinois Supreme Court does not warrant this Court's review.

SUPPLEMENTAL STATEMENT OF CASE

This case arises out of a dispute between the Auditor General and the Supreme Court of Illinois. Petitioner's brief omits several important background facts.

This dispute centers around the Petitioner's refusal since 1978 to audit public funds which are appropriated by the Illinois legislature for the administration of Illinois courts. Petitioner concedes that he has a statutory and constitutional duty to audit these funds. *See* Petitioner's Brief, Appendix B1 at App. 17. *See also* Ill. Const. art. VIII, § 3.¹ Petitioner claims that he is entitled to audit fees paid

¹ § 3. State Audit and Auditor General

(a) The General Assembly shall provide by law for the audit of the obligation, receipt and use of public funds of the State. The General Assembly, by a vote of three-fifths of the members elected to each house, shall appoint an Auditor General and may remove him for cause by a similar vote. The Auditor General shall serve for a term of ten years. His compensation shall be established by law and shall not be diminished, but may be increased, to take effect during his term.

(Footnote continued on following page)

by Illinois attorneys to the Attorney Registration and Disciplinary Commission (the "Commission") and the State Board of Law Examiners (the "Board"). Petitioner refuses to audit the funds appropriated by the Illinois legislature for the administration of the courts of Illinois unless he is also allowed to audit the registration and application fees paid by Illinois attorneys to the Commission and the Board.² Mr. Madden, as the Acting Director of the Administrative Office of the Illinois courts, commenced a mandamus proceeding in the Supreme Court of Illinois to compel Petitioner to perform his statutory duties and constitutional duties to audit the funds appropriated by the legislature for the functioning of the Illinois courts. See Petition for Writ of Mandamus (Appendix A attached at p. 1a). The mandamus action filed by Madden did not involve any issue regarding an audit of the Commission and the Board.

Petitioner thereafter filed a motion to dismiss in the Supreme Court of Illinois. Petitioner's motion requested the Supreme Court to dismiss the mandamus action on the basis of the Court's disqualification on due process grounds. The motion was denied. Petitioner then filed a complaint in federal district court under 42 U.S.C. § 1983 and requested that the district court enjoin the proceedings in the Supreme Court of Illinois. The district court denied Petitioner's request.

¹ continued

(b) The Auditor General shall conduct the audit of public funds of the State. He shall make additional reports and investigations as directed by the General Assembly. He shall report his findings and recommendations to the General Assembly and to the Governor.

² The issue as to whether Petitioner is entitled to audit the Commission and the Board is the subject of state court litigation in a case entitled, *Chicago Bar Association, et al. v. Robert G. Cronson*, No. 82 L 50131 (filed July 26, 1982).

Petitioner appealed from the federal district court to the United States Court of Appeals for the Seventh Circuit under 28 U.S.C. § 1292(a)(1). The court of appeals dismissed the case for lack of jurisdiction.

While Petitioner was attempting to seek relief in the federal courts, the Supreme Court of Illinois proceeded with the mandamus case before it and scheduled oral arguments. Petitioner refused to appear at the Illinois Supreme Court's hearing, and continues to refuse to perform the duties which he admits he has an obligation to perform.

REASONS WHY THE WRIT SHOULD BE DENIED

1. Petitioner Does Not Have Standing To Maintain His Action In Federal Court.

Petitioner lacks the proper standing to maintain this action in federal court. As the Seventh Circuit noted in upholding the federal district court's denial of Petitioner's attempt to enjoin the Illinois Supreme Court from proceeding in the mandamus action, "[Petitioner's] dispute simply has no place in federal court." *Cronson v. Clark*, 810 F.2d 662 (7th Cir. 1987). According to the Seventh Circuit Court of Appeals, Petitioner failed to demonstrate "the kind of actual or threatened injury that would support a lawsuit under traditional principles of common law or equity. . . ." *Id.* at 3. The only relief sought by Madden in the mandamus action was to compel Petitioner to perform a duty he admits he possesses. Petitioner believes his authority is more expansive and refuses to comply

with his statutory obligations to audit the appropriated funds until he is allowed to audit the funds paid by Illinois attorneys for the operation of the Board and the Commission. However, the court of appeals expressly rejected Petitioner's claim of greater auditing authority as a basis for a due process claim:

The terms "liberty" and "property" do not encompass the interest of a public official in being allowed to act to the full extent of what he conceives to be his powers under state law. The federal courts do not sit to resolve intramural disputes among state officials over the bounds of their authority under state law. Whether Mr. Cronson is told to conduct a full audit, a partial audit, or no audit, there is no way he can show a deprivation of his life, liberty, or property, which is a precondition to complaining of a denial of due process of law under the Fifth or Fourteenth Amendments. *Id.* at 4.

Petitioner further claims the issuance of a writ of mandamus by the Supreme Court of Illinois adversely reflects on his performance and threatens his property and liberty interests (Pet. Br. at 24). He also maintains that he will violate his duty if he obeys the writ of mandamus which was issued by the Supreme Court of Illinois (Pet. Br. at 25). The writ of mandamus was issued, however, for the very reason that Petitioner failed to perform the audit of the public funds appropriated for the operation of the Illinois courts as required by Illinois law. Petitioner will not violate his duty by obeying the writ of mandamus. In fact, Petitioner has violated his duty and continues to violate his duty by refusing to comply with the writ. Any injury to Petitioner results from his own refusal to audit the funds appropriated by the legislature for the administration of the state courts. Thus, Petitioner has no injury for which he may seek relief in the federal courts.

2. The Alleged Bias Of The Illinois Supreme Court Does Not Warrant This Court's Review Of A State Law Matter.

Petitioner seeks to disqualify the Supreme Court of Illinois from hearing this case on the grounds that the Justices have prejudged the issues and have a personal interest in the outcome of this case. Neither argument has merit.

Article VI, Section 4, of the Illinois Constitution³ grants the Illinois Supreme Court jurisdiction over any mandamus action which seeks to force an official to comply with his official responsibilities. For example, in *People v. Russell*, 294 Ill. 283, 128 N.E. 495 (1920), the Illinois Supreme Court issued a writ of mandamus to compel the Auditor General to issue a permit to organize a state bank.

Article VIII, Section 3, of the Illinois Constitution⁴ and the provisions of the State Auditing Act, Ill. Rev. Stat. ch. 15, § 301-2 (1985),⁵ require the Auditor General to

³ § 4. Supreme Court—Jurisdiction

(a) The Supreme Court may exercise original jurisdiction in cases relating to revenue, mandamus, prohibition or habeas corpus and as may be necessary to the complete determination of any case on review.

⁴ *Supra* note 1, at 2.

⁵ 301-2. Purpose and construction

§ 1-2. Purpose and construction.

(a) This Act implements Article VIII, Section 3 of the Constitution, and shall be construed in furtherance of those provisions.

(b) This Act is intended to provide a comprehensive and thorough post audit of the obligation, expenditure, receipt and use of public funds of the State under the direction and control of the Auditor General, to the end that the government of the State of Illinois will be accountable to the General As-

(Footnote continued on following page)

audit the funds appropriated by the General Assembly for the administration of the Illinois courts. Petitioner does not dispute this fact and indeed admits that he has a duty to audit such funds.

The very purpose of a writ of mandamus is to force an official to fulfill his statutory duties. *People v. Dunne*, 258 Ill. 441, 101 N.E. 560 (1913). A writ of mandamus by its nature does not confer any new authority, but merely requires the performance of an already existing duty. A writ will not be issued if it will interfere with the discretionary decisions of state officials. *People v. Potts*, 264 Ill. 522, 106 N.E. 524 (1914). In the present case, however, there is no discretionary authority in question. The Illinois Constitution absolutely requires the Auditor General to perform the audit in question.

Moreover, Petitioner's recitation of "evidence" showing the Illinois Supreme Court's prejudgment and bias misses the issue that was being litigated. The Illinois Supreme Court's alleged prejudgment concerns only the authority of Petitioner to audit the funds paid by Illinois attorneys in the functioning of the Board and the Commission, and does not relate to the obligation of Petitioner to audit the funds appropriated by the Illinois legislature for the operation of the Illinois courts. There could be no prejudgment of the issues raised in the mandamus action because

⁵ *continued*

sembly and the citizens and taxpayers, and to the end that the constitutional and statutory requirements governing state fiscal and financial operations will be enforced.

(c) This Act is intended to govern the Auditor General under the control and direction of the General Assembly. Neither the enactment of this Act nor any provision contained herein shall in any way derogate from the status of the Auditor General as a legislative officer of the State under the Constitution.

the Illinois Constitution and the State Auditing Act require, as Petitioner admits, the audit of the appropriated funds. The Illinois Supreme Court had no discretion in determining whether the writ should issue. The Illinois Constitution and the provisions of the State Auditing Act require the Auditor General to perform the audit of the funds appropriated in the administration and operation of the Illinois courts. The Illinois Supreme Court had no choice under the Illinois Constitution but to issue a writ of mandamus to force the Auditor General to perform his legal duties. Hence, the alleged personal interests of the Justices in this case in no way affected the proceeding or the outcome and should not be considered.

3. Principles Of Comity And Federalism Require That The Supreme Court Of Illinois Proceed In This Case.

Notwithstanding the absence of merit in Petitioner's claims of bias by the Supreme Court of Illinois, principles of comity⁶ and federalism⁷ support the refusal of the district court and the Seventh Circuit Court of Appeals to interfere with the rulings of the Illinois Supreme Court

⁶ "Comity" has been defined as, "[a] proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Younger v. Harris*, 401 U.S. at 44.

⁷ "Federalism" has been defined as, "[a] system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Id.*

and similarly require a denial of the petition for writ of certiorari. This Court has consistently determined that federal courts should not intervene in state proceedings which involve important state interests unless Petitioner does not have an adequate remedy at law and will suffer great and immediate irreparable injury. *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746 (1971); *Huffman v. Pursue*, 420 U.S. 592, 95 S.Ct. 1200 (1975); *Judice v. Vail*, 430 U.S. 327, 97 S.Ct. 1211 (1977); *Trainor v. Hernandez*, 431 U.S. 434, 97 S.Ct. 1911 (1977). This Court consistently defers to the interests of the state sovereignty and seeks to uphold the integrity of state judiciaries. As Justice Black indicated in *Younger v. Harris*, 401 U.S. at 45,

“[i]t has been perfectly natural for our cases to repeat time and time again that the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions. ”

This Court recognizes that state courts are competent to handle federal constitutional issues, particularly in light of the fact that such decisions are reviewable by this Court. *Huffman v. Pursue*, 420 U.S. 592, 95 S.Ct. 1200 (1975). State courts are entrusted with the protection of federal constitutional rights and the federal courts will only interfere in “extraordinary circumstances.”⁸ *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 102 S.Ct. 2515 (1982).

Whether such extraordinary circumstances are present initially involves an examination of the state’s interests in the proceedings. Where important state interests are

⁸ Extraordinary circumstances have been construed to entail bad faith prosecutions, harassing litigation or a flagrantly unconstitutional statute, none of which exist in this case. *Huffman v. Pursue*, 420 U.S. at 611.

implicated, the federal courts should abstain from interfering unless there is a showing that Petitioner does not have an adequate remedy at law and will suffer great, immediate and irreparable injury. *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 102 S.Ct. 2515 (1982); *Huffman v. Pursue*, 420 U.S. 592, 95 S.Ct. 1200 (1975); *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746 (1971).

Petitioner does not contest the substantiality of the state's interests in this case. The state of Illinois has an extremely important interest in the proper performance of the statutory duties of public officials such as the Auditor General. The Auditor General serves an important role in the government insuring the protection of public funds. The very fact that state officials are involved in this controversy demonstrates the state's interests in this case. *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 102 S.Ct. 2515 (1982). Thus, in order to warrant federal interference, the burden is on the Petitioner to show that he has no adequate remedy at law and that he will suffer great, immediate and irreparable harm. The Petitioner has failed to satisfy these requirements.

Petitioner has available an adequate remedy at law, and in fact has availed himself of that remedy. The fact that the Petitioner filed a motion to dismiss this action with the Illinois Supreme Court demonstrates the Petitioner's belief that the state court is the proper forum for the resolution of this dispute. Petitioner's petition for writ of certiorari is motivated purely by his dissatisfaction with the outcome at the state court level.

Notwithstanding the fact that he has already made use of the state court forum, Petitioner claims that the Illinois Supreme Court failed to provide him with a fair hear-

ing. Petitioner maintains that the Justices of the Supreme Court of Illinois prejudged the issues in this case and thus violated his due process rights under the Fourteenth Amendment. The rulings of this Court have squarely rejected the notion that prejudgment of the issues alone is sufficient to rise to the level of a constitutional deprivation. This Court requires a showing of an additional pecuniary interest in order to implicate the Fourteenth Amendment. *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 68 S.Ct. 793 (1948); *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437 (1927); *Aetna Life Insurance Co. v. Lavoie*, ____ U.S. ____, 106 S.Ct. 1580 (1986).

In *Federal Trade Commission*, this Court addressed the issue as to whether prejudgment of the issues rises to the level of a deprivation of Fourteenth Amendment due process rights. In that case, the FTC charged the defendants with antitrust violations and commenced proceedings against the defendants. The defendants asked the Commission to disqualify itself from the proceedings claiming that the Commission had prejudged the issues as to the possible antitrust violations. When the Commission refused to disqualify itself, defendants sought judicial relief and introduced numerous reports and testimony that demonstrated that the Commission believed the defendants had violated antitrust laws. This Court noted that most matters concerning judicial disqualifications do not implicate the constitutional provisions and indicated:

“[No] decision of this Court would require us to hold that it would be a violation of procedural due process for a judge to sit in a case after he had expressed an opinion as to whether certain types of conduct were prohibited by law.”

The present case is very similar to *Federal Trade Commission* in that Petitioner has introduced numerous ex-

hibits tending to show that the Justices of the Supreme Court of Illinois had formed an opinion concerning the dispute. However, as *Federal Trade Commission* demonstrates, that fact alone does not amount to a due process violation absent a showing of an additional pecuniary interest. This principle was again articulated in *Aetna Life Insurance Co. v. Lavoie*, ____ U.S. ____, 106 S.Ct. 1580 (1986). In *Aetna*, as in this case, the Justices were accused of having a personal interest in the outcome of the dispute. This Court explained that disqualification is required under the due process clause when "a direct, personal, substantial and pecuniary interest" is present. *Id.* at 1586-88.

These cases demonstrate this Court's rule that the possibility of prejudgment of issues alone is not a sufficient basis for the violation of Fourteenth Amendment due process rights. A more substantial pecuniary interest is required before the Fourteenth Amendment is implicated. The Justices of the Supreme Court of Illinois do not have any pecuniary interest in the outcome of this case. In fact, the Petitioner admits that the Justices of the Supreme Court of Illinois lack a pecuniary interest in the outcome of this dispute (Pet. Br. at 21). The only issue involved is the proper function and performance of a state official's statutory duty, a duty the Petitioner admits he possesses. Nothing more is at stake in this case and thus no questions of due process violations are present.

4. The Rule Of Necessity Supports The Disposition Of This Case By The Supreme Court Of Illinois.

Even assuming that Petitioner can present a credible argument that the Justices of the Supreme Court of Illinois had a personal and pecuniary interest in the outcome

of this case, the Rule of Necessity requires that the Illinois Supreme Court proceed in this case. The Rule of Necessity allows an official to decide an issue notwithstanding a personal interest in the outcome. In *United States v. Will*, 449 U.S. 200, 101 S.Ct. 471 (1980), thirteen federal judges challenged the validity of a statute which decreased their compensation. The district court granted summary judgment in favor of the judges and that decision was appealed directly to this Court. The issue before this Court was whether under 28 U.S.C. § 455, which provides that any justice or judge of the United States shall remove himself from hearing a case in which his objectivity may reasonably be questioned including situations where he has an interest as a party or has some financial interest. This Court stated that all federal judges had a financial interest in the resolution of the dispute. Thus, their impartiality was questioned. However, this Court determined that the federal court system was the appropriate forum for the case under the Rule of Necessity. This Court in *Will* noted:

“[A]nd we would not casually infer that the Legislative and Executive Branches sought by the enactment of § 455 to foreclose federal courts from exercising ‘the province and duty of the judicial department to say what the law is.’ ”

Will, 449 U.S. at 217, citing *Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 177 (1803).

In this case, however, no credible argument can be made that the Illinois Supreme Court Justices had a pecuniary or personal interest in the litigation before it. If the Justices of the Supreme Court of Illinois have any interest at all it is merely an indirect interest because the funds which are the subject of the mandamus action are appropriated for the operation of the Illinois Courts.

Petitioner's claim of bias on the basis of the Illinois Supreme Court's statements that the Auditor General has no authority to audit the funds of the Commission and the Board is irrelevant to this dispute as the audit of those funds was not the subject of the mandamus action. Any interest of the Illinois Supreme Court in the mandamus action is not pecuniary or personal in nature and does not implicate the due process clause of the Fourteenth Amendment. *See supra*, pp. 11-12. The mandamus action was entirely a matter of the proper limits of a state official's authority under state law. That issue is inherently an internal Illinois state matter and was properly resolved by the Illinois Supreme Court.

CONCLUSION

For all the foregoing reasons, Respondent William M. Madden, respectfully requests that the Court deny the petition for a writ of certiorari.

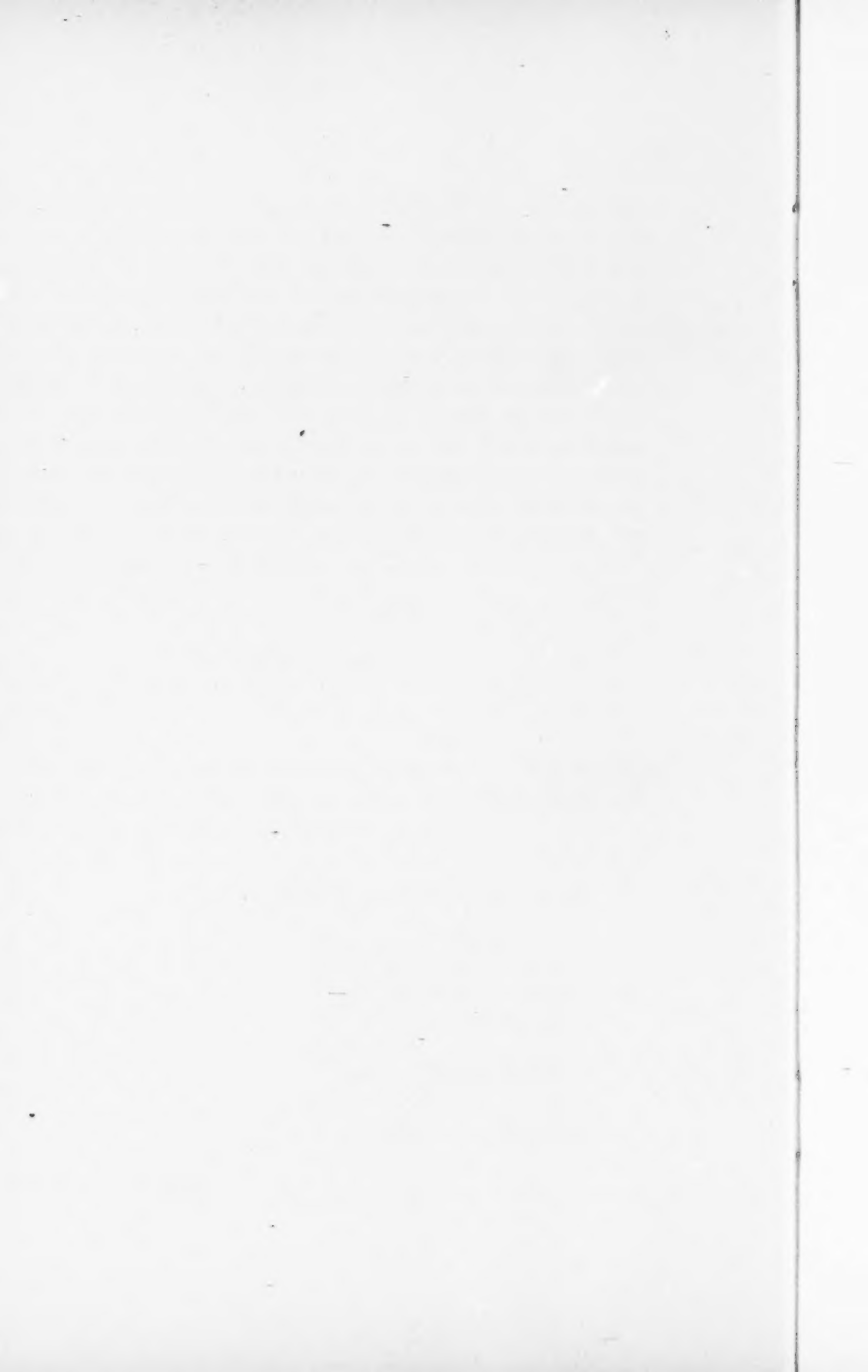
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APPENDIX A

IN THE SUPREME COURT OF ILLINOIS

WILLIAM M. MADDEN, Acting)	
Director of the Administrative)	
Office of the Illinois Courts,)	
)	
Plaintiff,)	
)	
vs.)	No.
)	
ROBERT G. CRONSON, Auditor)	
General of the State of Illinois,)	
)	
Defendant.)	

PETITION FOR WRIT OF MANDAMUS

Plaintiff, William M. Madden, Acting Director of the Administrative Office of the Illinois Courts, by his attorneys, Phelan, Pope & John, Ltd., complains of the defendant, Robert G. Cronson, Auditor General of the State of Illinois, and states as follows:

1. This is an action to compel the Auditor General of the State of Illinois to conduct an audit of the funds appropriated by the Illinois General Assembly and expended by the Administrative Office of the Illinois Courts. An audit of those funds is required by Article VIII, §3 of the Constitution of the State of Illinois and the provisions of the State Auditing Act. Ill. Rev. Stat. Chap. 15 §301.

2. This Court has jurisdiction by reason of Article VI, §4 of the Illinois Constitution, which confers original jurisdiction in the Illinois Supreme Court over any action in

the nature of mandamus to compel an official of the State of Illinois to perform duties owed to the public.

3. Plaintiff, William M. Madden, is Acting Director of the Administrative Office of the Illinois Courts. In that capacity, he has responsibility, under the supervision of the Supreme Court of Illinois, of obtaining from the Illinois Legislature the necessary appropriations for the operation of the judicial branch of Illinois state government. In addition, he has the responsibility of supervising the expenditure of those state funds appropriated for the operation of the judicial branch and the payment of all employees of the judicial branch.

4. Defendant, Robert G. Cronson, is Auditor General of the State of Illinois. Under Article VIII, §3 of the Constitution of the State of Illinois he is required to "conduct the audit of the public funds of the State." In addition, under the provisions of the State Auditing Act, Ill. Rev. Stat., Chap. 15 §301, the Illinois Auditor General is required to conduct a financial audit of all agencies created by the Illinois Constitution, including those within the judicial branch.

5. During the period from 1968 through June 30, 1978, the Office of the Auditor General conducted financial audits at the end of each fiscal year of all funds appropriated by the Illinois General Assembly and expended by the Administrative Office of the Illinois Courts.

6. From the end of fiscal year 1979 to the present, the Office of the Auditor General has failed to conduct an audit of funds appropriated by the Illinois General Assembly and expended by the Administrative Office of the Illinois Courts.

7. By letter dated, December 11, 1985, Roy O. Gulley, then Director of the Administrative Office of the Illinois Courts, wrote to Robert G. Cronson, Auditor General of Illinois, requesting that the Office of Auditor General conduct a complete audit of the funds appropriated by the Illinois General Assembly and expended by the Administrative Office of the Illinois Courts. Mr. Gulley specifically requested Mr. Cronson to conduct an audit of the sub-

ject funds at the end of his tenure as Director of the Administrative Office of Illinois Courts and prior the assumption of that office by plaintiff, William M. Madden, See letter of Roy O. Gulley dated December 11, 1985, attached hereto as Exhibit A.

8. By letter dated December 16, 1985 from Robert G. Cronson, Illinois Auditor General, to Roy O. Gulley, Mr. Cronson refused to conduct the audit of the funds appropriated by the Illinois General Assembly and expended by the Administrative Office of the Illinois Courts as requested by Mr. Gulley in his letter dated December 11, 1985 and as required by Article VIII, §3 of the Constitution of the State of Illinois and the provisions of the State Auditing Act. See letter of Robert G. Cronson dated December 16, 1985, attached hereto as Exhibit B.

9. Notwithstanding his constitutional and statutory duties and the specific request made upon him, the Illinois Auditor General has failed and refused to conduct an audit of the funds appropriated by the Illinois General Assembly and expended by the Administrative Office of the Illinois Courts.

10. Plaintiff has suffered and will continue to suffer irreparable injury if defendant is not required to perform his constitutional and statutory duties to audit the funds appropriated by the Illinois General Assembly and expended by the Administrative Office of the Illinois Courts.

WHEREFORE, plaintiff prays for judgment requiring defendant to perform his constitutional and statutory duties to conduct an audit of the monies appropriated to and expended by the Administrative Office of the Illinois Courts and for other equitable relief as the Court deems appropriate.

/s/ RICHARD J. PHELAN

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